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UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

BROOKMEAD PARTNERS LP, a Nevada Limited Partnership, Plaintiff, v. Interinsurance Exchange of the Automobile Club, a California business entity, Saracia L.P. Shannahan, and William P. Shannahan, Higgs, Fletcher & Mack, LLP, a California business entity, Defendants. ______________________________ And Related Cross-Claims ______________________________	**Case No.** 08 CV-659-JLS (WMC) **PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT SARACIA L.P. SHANNAHAN'S EX PARTE APPLICATION FOR EMERGENCY RELIEF FROM ORDER DATED JUNE 11, 2008 AND COURT'S ORDER TO SHOW CAUSE WITH RESPECT THERETO** Date: No Hearing Set Time: No Hearing Set Dept: Courtroom 6, 3rd Floor Judge: Hon. J. Sammartino

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I. INTRODUCTION

This case is a simple declaratory relief action and involves the determination of the rights to the payment of Coverage A and Coverage B, amounting to approximately $957,525.23, under that certain policy of homeowner's insurance issued by defendant Interinsurance Exchange of the Automobile Club ("AAA") identified as Homeowner's Policy Number CHO 003045070, (the Homeowner's Policy") for the policy period from "11-12-2007" to "11-12-2008". The real property insured under the Homeowner's Policy, known as 2677 Brookmead Lane, La Jolla, California, (the "Brookmead Property") was totally destroyed by fire on December 15, 2007. Plaintiff is the owner of the Brookmead Property, and is the owner of the insurable interest under Coverage A and Coverage B of the Homeowner's Policy. Defendants William P. Shannahan ("Mr. Shannahan") and Saracia L.P. Shannahan ("Mrs. Shannahan") were named as insureds on the Homeowner's Policy. Defendant AAA was obligated to make payment of the loss covered under Coverage A and Coverage B of the Homeowner's Policy and voluntarily made such payment to defendant Higgs, Fletcher & Mack, LLP, ("HF&M") who, in light of the conflicting claims thereto, brought the Crossclaim to interplead the fund into this court.

Notwithstanding the straightforward legal and business nature of this action, Mrs. Shannahan seeks to insert into these proceedings before this court all of the drama, vitrol and angst of a vituperative domestic relations proceeding[1] by bringing what should have been orderly brought as a Federal Rule 12b motion in the guise and under the pressure of an ex parte application and an OSC. She accuses that all of this "occurred without the knowledge of Saracia Shannahan" and that she was "stripped of her property rights without notice or any opportunity to be heard."[2] Such an accusation is intentionally misleading and in making it she has been less than candid with this court. She contends that the state family law court exercised and retained jurisdiction of the fund at issue herein.[3] The contention is based not upon the law, or the facts as reflected in the transcript of any hearing, but upon her interpretation and the conduct of her own counsel in improperly inserting words into a submitted order that were not included by the court. She wrongly argues that this court should abstain under various case law theories,[4] and because the matter is within the domestic relations exception to federal jurisdiction,[5] or under the principals of comity[6] and she asserts that Plaintiff can not maintain this action because of lack of diversity of citizenship.[7] The doctrines are simply inapplicable. The arguments and assertions are not based upon the facts as they exist, and Mrs. Shannahan would have the court ignore not only the factual findings of the state family law court regarding the ownership of the Brookmead Property, as well as the policy period of the Homeowner's Policy, but also the fact that neither plaintiff, nor its immediate predecessor in interest, who were and are the owners of the Brookmead Property and the insurable interest under the Homeowner's Policy, were parties to the Dissolution Case.

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[1] *In re Marriage of Shannahan*, Docket #D483710, hereinafter referred to in this Memorandum as the "Dissolution Case"

[2] *See*, Defendant Saracia L. P. Shannahan's Ex Parte Application, p. 3, l. 22 and ll. 26-27.

[3] *See, Id.*, at p. 7, l. 2 thru p. 9, l. 14.

Accordingly, it is plaintiff's position that good cause is shown pursuant to the court's Order to Show Cause, and the relief requested by Mrs. Shannahan's *Ex Parte* Application should be summarily denied.

II. STATEMENT OF FACTS

Plaintiff filed the Complaint herein on April 11, 2008, however, *prior* to the answer of any party, and on May 29, 2008, *prior* to receiving of Notice of Waiver of Service of Summons, from any party who has not answered to date, plaintiff filed the First Amended Complaint, replacing its original filing. While the First Amended Complaint on file herein traces the transfers of ownership of the Brookmead Property to establish that neither Mr. Shannahan nor Mrs. Shannahan have any ownership interest therein, and hence no legal claim upon the fund representing the payment of Coverage A and Coverage B under the Homeowner's Policy, significantly neither Mr. Shannahan nor Mrs. Shannahan are partners or members of Plaintiff or of its constituent partners as of that filing date. Mr. Shannahan does not claim to be a partner,

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4 *See, Id.*, at 16, l. 12 thru p. 17, l. 12.

5 *See, Id.*, at 17, l. 19 thru p. 18, l.15.

6 *See, Id.*, at 18, ll. 18-24.

7 *See, Id.*, p. 11, l. 9 thru p. 13, l. 2.

directly or indirectly, in Plaintiff, and he claims no interest in the proceeds of Coverage A and Coverage B of the Homeowner's Policy at issue herein. Mrs. Shannahan has no interest in Plaintiff and has had no interest in Plaintiff's predecessor in interest, Brookmead Partners, a California general partnership, the state family law court having determined that Mr. Shannahan's transfer of Mrs. Shannahan's community property interest thereto was *ab initio* improper and although not "illegal or fraudulent", was nevertheless a breach of his fiduciary duty, and awarding her a judgment against him in an amount exceeding $2,000,000 by reason thereof. [8]

Plaintiff, Brookmead Partners Limited, a Nevada Limited Partnership, was the successor in interest to Brookmead Partners, a California general partnership. It was formed on September 24, 2007, and its Certificate of Limited Partnership was filed on April 9, 2008.[9] Contrary to Mrs. Shannahan's argument, it is a Nevada Limited Partnership in good standing. Through an administrative oversight, its Initial List of General Partners and Resident Agent did not get filed until June 25, 2008.[10] Plaintiff's principal place of business, if that of its general partner, is at 208 Blaine Street, Seattle, Washington. As of the filing of the First Amended Complaint, Brookmead Partners, LP consists of (1) Virginia Way LLC a Nevada Limited Liability Company, (2) Northwest Financial Limited, a Nevada Limited Partnership, and (3) BLLJ, a Nevada Limited Partnership.[11]

(1) Virginia Way LLC, a Nevada Limited Liability Company

The members of the entity consist of

(a) Kolmar, LLC, a Nevada Limited Liability Company

(b) Shannahan Childrens Trust dated October 13, 1989, and

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[8] *See,* Ex. H, to Defendant Saracia L. P. Shannahan's Ex Parte Application, Final Statement of Decision, p. 4, ll. 24-27, *and* p. 12, l. 24 thru p. 13, l. 9.

[9] *See*, Exhibit 1, attached hereto and incorporated herein by reference.

[10] *See*, Exhibit 2, attached hereto and incorporated herein by reference.

[11] *See*, Declaration of William P. Shannahan, ¶ 7, separately filed on this date by Mr. Shannahan's attorney of record herein, James Reynolds, and hereinafter referred to as the "Dec. of W. Shannahan, ¶___".

(c) WPS Investments, Inc., a Nevada corporation.[12]

(i) Kolmar LLC, A Nevada Limited Liability Company

The first member of Virginia Way, LLC similarly has its principal place of business at 208 Blaine Street, Seattle, Washington. It consists of

(A) Its managing member, MM Childrens Trust, and

(B) Virginia Way, LLC.[13]

Significantly, MM Childrens Trust was formed by Mr. Shannahan, as the Trustor on or about September 27, 2007, well before the fire and loss of the Brookmead Property, and its Trustee is Tyler L. Farmer, an attorney admitted to practice in both California and Washington, who is a resident of Seattle, Washington, with a principal place of business at 208 Blaine Street, Seattle, Washington.[14]

(ii) The Shannahan Childrens Trust

The second member of Virginia Way, LLC, was formed in 1989. While both William and Saracia Shannahan may have been Trustors, neither is the Trustee. In July, 2006, the then Trustee resigned and appointed as his successor Richard Tan, a U.S. citizen, who is a permanent resident of the People's Republic of China, and who resides in Shanghai, Peoples Republic of China.[15]

(iii) WPS Investments, Inc., a Nevada corporation

This is the last member of Virginia Way, LLC. Although Mr. Shannahan has a beneficial interest in WPS Investments, Inc., its only business is holding a passive ownership interests in the other entities related to the Brookmead Property, and it neither has, nor conducts, any business in California.[16]

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[12] *See*, Dec. of W. Shannahan, ¶8.

[13] *Id.*, ¶9.

[14] *See*, Declaration of Tyler Farmer, ¶¶ 1, 3, 4 and 5, filed concurrently herewith.

[15] *See*, Declaration of Richard Tan, ¶¶ 1-5, filed concurrently herewith.

[16] *See*, Dec. of W. Shannahan, ¶ 16

(2) Northwest Financial Limited, a Nevada Limited Partnership

The members of the entity consist of

(a) Northwest Financial, Inc., a Nevada corporation, and

(b) MM Childrens Trust[17]

The principal place of business of Northwest Financial, Inc. is 1000 East William Street, Carson City, Nevada 89701. Although Mr. Shannahan is an officer and director of Northwest Financial, Inc., the shareholder is a Cayman Island Trust whose Trustee is located in Hong Kong. The sole asset of Northwest Financial, Inc. is a general partnership interest of Northwest Financial Limited in its holding of a passive ownership interests in the other entities related to the Brookmead Property. Northwest Financial, Inc. conducts no business in California.[18]

(3) BLLJ, a Nevada Limited Partnership

The members of the entity consist of

(a) WPS Investments, Inc., a Nevada corporation and

(b) MM Childrens Trust[19]

Neither one of which has any office in or conducts business in California.

Plaintiff is the owner of the Brookmead Property, and is the owner of the insurable interest under Coverage A and Coverage B of the Homeowner's Policy. The Homeowner's Policy was issued by AAA for the policy period from "11-12-2007" to "11-12-2008". The Brookmead Property was totally destroyed by fire on December 15, 2007, during the policy period. The fact that defendants Mr. Shannahan and Mrs. Shannahan may be listed as the insured on the Homeowner's Policy is not a function of ownership of insurable interest, but of the fact that the policy was originally obtained and issued in that form and the fact that commencement of the Dissolution Case by Mrs. Shannahan on or about April 20, 2004, deprived Mr. Shannahan of the ability thereafter to change the Homeowner's Policy with AAA, in any respect whatsoever.

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[17] *Id.*, ¶10.

[18] *Id.*, ¶17

[19] *Id.*, ¶11.

By reason thereof, Plaintiff commenced the within action for declaratory relief.

Mrs. Shannahan's protestations to the contrary notwithstanding, she was well aware of this action and the pleadings filed herein. On May 6, 2008, she included a copy of the original Complaint herein as an exhibit to her pleadings filed in the Dissolution Case. She actively and repeatedly evaded personal service of process on more than 24 separate occasions, and her attorneys refused to accept service of the Summons and Complaint herein by Waiver of Service on her behalf, although being asked by Plaintiff's counsel to do so. On June 6, 2008, Plaintiff sent a copy of the Summons and First Amended Complaint herein to Attorney Jill Sullivan and requested that she accept the same on behalf of Mrs. Shannahan by Waiver of Service. Service was ultimately so accepted on behalf of Mrs. Shannahan on June 18, 2008.

At the hearing before the state family law court on May 6, 2008, AAA appeared, and although the state family law court declined to join them as a party, requested and agreed to make a *voluntarily* payment of the funds herein at issue to the HF&M client trust account.[20] Significantly, at that hearing the state family law court did not assert and retain jurisdiction of the funds so paid. To the contrary, the state family law court recognized that this federal action had been filed[21] and deferred to federal jurisdiction, [22] but even instructed that he did not want any separate order on the matter.[23] Importantly, the

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[20] "THE COURT: . . . Or to put it a different way, are you willing to voluntarily comply since I don't have you joined with these terms that are orders really between these two parties at this point, is my question.

"MR. SMITH: I'm a company man, so I'm going to do what you say. There's no objection, honestly. The insurance company all the way along just wants to get rid of the money. . . ."

See, Ex. 3, Reporters Transcript of JAMS Hearing, May 6, 2008, p. 15, ll. 4-12, attached hereto and incorporated herein by reference.

[21] "THE COURT: . . . And we have a motion pending to join the insurance company, and we also have a case involving - - I believe that involves potentially the insurance company that has now been filed in federal court." *Id.*, at p. 5, ll. 20-23.

"THE COURT: . . .I would be disinclined to join the insurance company until I know what is going to happen in federal court in any event." *Id.*, p. 6, ll. 8-10.

[22] "THE COURT: ' ' 'There's some things that need to happen before I can act on it. I'm not going to interfere - - obviously, even if I had the power, I would not try to interfere with the federal proceedings.

"But more importantly, there is still a supremecy clause. And I think I have to acknowledge that. And if they decide to take over this aspect of the case, I've lost, I think, jurisdiction to do anything there. And so I want to give them transcript of the May 6, 2008, hearing is first devoid of any direction that a formal order on the *voluntary* deposit to the HF&M client trust account be prepared by Mrs. Shannahan's counsel, and secondly, it is devoid on any indication that the funds were to be held by HF&M "until further order of the court". More importantly, Plaintiff herein, who as the owner of the insurable interest under Coverage A and Coverage B of the Homeowner's Policy and thus entitled to the payment made by AAA purporting to be in satisfaction thereof, was not a party to the proceedings before the state family law court and is not bound thereby.

III. ARGUMENT

A. MRS. SHANNAHAN HAD NOTICE OF THE PENDENCY OF THESE PROCEEDINGS AND MAY NOT CLAIM PREJUDICE BY HER FAILURE TO ACCEPT SERVICE AND BECOME INVOLVED

Mrs. Shannahan may not be heard to complain that these proceedings, including this court order of June 11, 2008, "occurred without the knowledge of Saracia Shannahan" and that she was "stripped of her property rights without notice or any opportunity to be heard."[24] She was well aware of this action and the pleadings filed herein. Although she included a copy of the original Complaint herein as an exhibit to her pleadings filed in the Dissolution Case on May 6, 2008, the Non Service Report executed under penalty of perjury by Plaintiff's process server, P.A. Rodriguez[25] clearly indicates that she actively and repeatedly evaded personal service of process on more then 24 separate occasions between April 11, 2008, and May 11, 2008. Her state family law court attorney, who so utilized the original Complaint, refused to accept service on behalf of her client when asked to do so on May 23, 2008, and indicated that other counsel had already been retained by Mrs. Shannahan.[26] Clearly, she was aware of the proceedings if she had already retained other counsel. Plaintiff's inquiry on May 23, 2008, to Mrs. Shannahan's current counsel herein as to

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that opportunity." *Id.*, at p. 14, ll. 13-21.

[23] "THE COURT: Okey. Now, I do not intend that this requires any separate order. This is either one way or the other in the first choice, because it's the way I made the order originally is the Higgs Fletcher account." *Id.*, at p. 9, ll.7-10.

[24] *See*, Defendant Saracia L. P. Shannahan's Ex Parte Application, p. 3, l. 22 and ll. 26-27.

[25] *See*, Exhibit 4, attached hereto and incorporated herein by reference.

[26] *See*, Exhibit 5, attached hereto and incorporated herein by reference.

as whether they would accept service on her behalf went unanswered.[27] Notwithstanding having not received an answer to its inquiry of May 23, 2008, on June 6, 2008, Plaintiff sent a copy of the Summons and First Amended Complaint herein to Attorney Jill Sullivan and requested that she accept the same on behalf of Mrs. Shannahan by Waiver of Service.[28]

While service was ultimately so accepted on behalf of Mrs. Shannahan on June 18, 2008, her course of conduct clearly evinces that she was avoiding service of process prior to that date and she may claim neither surprise or prejudice by reason thereof. The nature of Plaintiff's action disputing ownership of the insurance was clearly known to Mrs. Shannahan and her attorneys for more than a month prior to June 11, 2008, and it is axiomatic and requires little, if any, citation to authority for the proposition that where different parties so dispute the rights to such a fund, as herein, the holder of the fund, whether it be AAA or HF&M, will seek to implead the fund into court.[29]

This court's order of June 11, 2008, was made well more than a month after Mrs. Shannahan knew, or should have known, of the existence of this declaratory relief action, and could clearly be anticipated by her and her counsel. One may not so avoid service of process, hiding with one's head in the sand like an ostrich, and ingenuously claim surprise when both the wholly predictable and the inevitable happens. Such a claim is simply intended to mislead this court into thinking that Plaintiff 's conduct is somehow nefarious, when in fact it is Mrs. Shannahan's conduct that is not diligent. She could have easily had the opportunity to be heard in this matter merely by being amenable to service of process or accepting service by Notice of Waiver when proffered by Plaintiff, as is her duty.[30]

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27 *See*, Exhibit 6, attached hereto and incorporated herein by reference.

28 *See*, Exhibit 7, attached hereto and incorporated herein by reference.

29 28 *U.S.C.* § 1335.

30 *See*, Fed Rule Civ. Pro., Rule 3(d)(2).

B. THE STATE FAMILY LAW COURT HAS DONE NOTHING TO OUST THIS COURT FROM TAKING JURISDICTION OF THE FUND WHICH HF&M SEEKS TO DEPOSIT WITH THIS COURT IN THE CROSSCLAIM FOR INTERPLEADER

Mrs. Shannahan's argument to the contrary notwithstanding, the state family law court has done nothing to oust this court from taking jurisdiction of the fund which HF&M seeks to deposit with this court in the crossclaim for interpleader. A simple review of the applicable portions of the Reporter's Transcript of the May 6, 2008, hearing before the state family law court reveals that her argument is more than merely wishful thinking, but is pure obfuscation engineered by the actions of her own attorney in gratuitously inserting her own language into to a court order that was not called for to be made by the court, and language that was not used by the court.

At the hearing before the state family law court on May 6, 2008, AAA appeared, and although the state family law court declined to join them as a party, requested and agreed to make a *voluntarily* payment of the funds herein at issue to the HF&M client trust account.[31] It should require no citation to authority for the proposition that a payment voluntarily made by a third party who is not a party to the litigation to a party other than the clerk of the court is not a payment over which the court asserts jurisdiction. Significantly, at that hearing the state family law court did not assert and retain jurisdiction of the funds so paid. To the contrary, while accommodating AAA's voluntary payment by allowing its receipt into the client trust account of HF&M, the state family law court recognized that this federal action had been filed [32] and deferred to federal jurisdiction.

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[31] "THE COURT: . . . Or to put it a different way, are you willing to voluntarily comply since I don't have you joined with these terms that are orders really between these two parties at this point, is my question.

"MR. SMITH: I'm a company man, so I'm going to do what you say. There's no objection, honestly. The insurance company all the way along just wants to get rid of the money. . . ."

Ex. 3, Reporters Transcript of JAMS Hearing, May 6, 2008, p. 15, ll. 4-12.

[32] "THE COURT: . . . And we have a motion pending to join the insurance company, and we also have a case involving - - I believe that involves potentially the insurance company that has now been filed in federal court." *Id.*, at p. 5, ll. 20-23.

As set forth in the Reporters Transcript:

> "THE COURT: . . . There's some things that need to happen before I can act on it. I'm not going to interfere - - obviously, even if I had the power, I would not try to interfere with the federal proceedings.
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> "But more importantly, there is still a supremacy clause. And I think I have to acknowledge that. And if they decide to take over this aspect of the case, I've lost, I think, jurisdiction to do anything there. And so I want to give them that opportunity.[33]

Additionally, and importantly, the state family law court even instructed that he did *not* want any separate order on the matter.

> "THE COURT: Okey. Now, I do not intend that this requires any separate order. This is either one way or the other in the first choice, because it's the way I made the order originally is the Higgs Fletcher account."[34]

Moreover, the transcript of the May 6, 2008, hearing is also devoid of any indication that the funds were to be held by HF&M "until further order of the court".

More importantly, Plaintiff herein, who as the owner of the insurable interest under Coverage A and Coverage B of the Homeowner's Policy and thus entitled to the payment made by AAA purporting to be in satisfaction thereof , was not a party to the proceedings before the state family law court and is not bound thereby. Clearly, the state family law court lacks the jurisdiction to take possession of funds rightfully belonging to Plaintiff herein when Plaintiff herein *is not a party* before it.

C. MRS. SHANNAHAN IS NOT A PARTNER OF PLAINTIFF, NOR DOES SHE HAVE ANY DIRECT OR INDIRECT INTEREST IN PLAINTIFF AND COMPLETE DIVERSITY OF CITIZENSHIP EXISTS.

Plaintiff filed the Complaint herein on April 11, 2008, however, *prior* to the answer of any party, on May 29, 2008, and *prior* to receiving of Notice of Waiver of Service of Summons, from any party who has not answered to date, plaintiff filed the First Amended Complaint, replacing its original filing. Its filing of the amended pleading was a matter of right that prejudiced no one [35] and accordingly, diversity

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"THE COURT: . . .I would be disinclined to join the insurance company until I know what is going to happen in federal court in any event." *Id.*, p. 6, ll. 8-10.

[33] *Id.*, at p. 14, ll. 13-21.

[34] *Id.*, at p. 9, ll.7-10.

[35] Fed. Rules Civ. Pro. Rule 15(a).

of citizenship in this matter is determined from the time of the filing of the amended complaint.[36]

It is undisputed that Mrs. Shannahan is a California Citizen. She is not a partner, nor does she have any interest in any partner of Plaintiff. While the First Amended Complaint on file herein traces the transfers of ownership of the Brookmead Property to establish that neither Mr. Shannahan nor Mrs. Shannahan have any ownership interest therein, and hence no legal claim upon the fund representing the payment of Coverage A and Coverage B under the Homeowner's Policy, such allegations of tracing do not admit that Mrs. Shannahan is a partner, or has any interest in a partner of Plaintiff. To the contrary, while the issue of the ownership of the Brookmeand Property was squarely before and obviously litigated between Mrs. Shannahan and Mr. Shannahan in the Dissolution Case, the state family law court determined that the Brookmead Property was owned by a non-joined separate legal entity, i.e. Plaintiff's predecessor in interest, Brookmead Partners, a California general partnership, and it acknowledged that it lacked the authority to order the non-joined separate entity to return the Brookmead Property to the community over which he exercised jurisdiction.[37] The state family law court found that the transfer of the Brookmead Property, technically effected by Mr. Shannahan in January, 2003, to Plaintiff's predecessor in interest Brookmead Partners. a California general partnership, while being neither illegal nor fraudulent, was nevertheless a violation of his fiduciary duty to Mrs. Shannahan in that it was done without her consent. Effectively finding the transfer to be wrongful *ab initio,* the state family law court awarded a judgment to Mrs. Shannahan against Mr. Shannahan in excess of $2,000,000.00, which sum included and represented whatever interest she may have had, whether "equity" or otherwise, in the Brookmead Property. Therefore,

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[36] *Beghin-Say Intern., Inc. v. Ole-Bendt Rasmussen*, 733 F.2d 1568, 1572 (C.A.Fed.,1984)(determination of citizenship for diversity purposes must be made as of the filing date of a complaint, or of an amended complaint, and cannot be changed by action of a party thereafter.) There has been considerable litigation over diversity of citizenship being determined from the filing of the complaint. It has emerged that the general rule is that diversity is determined upon the filing of the complaint commencing the action, and that the actions of the parties thereafter does not change the determination. *See, e.g., Grupo Dataflux v. Atlas Global Group, L.P.*, 541 U.S. 567, 571-72 (2004). However, in such cases where the general rule has been applied, the actions of the parties purporting to effect diversity of citizenship occurred after the issues had been joined, and without a prior amended complaint. In the present case, the amended complaint was filed, as a matter of right, under Fed. Rule Civ. Pro., Rule 15a, and *prior to the appearance* of any adverse party. *See, e.g., Id.*, at 5568-69. It is submitted, therefore, that the time of filing of the amended complaint is the appropriate time for determination.

[37] *See,* Ex. H, to Defendant Saracia L. P. Shannahan's Ex Parte Application, Final Statement of Decision, p. 12, l. 24 thru p. 13, l. 9.

Mrs. Shannahan never was a partner of Plaintiff's predecessor in interest, and is not now a partner of Plaintiff, nor does she hold any interest in any partner of Plaintiff.

It is not contested that Mr. Shannahan is a California citizen and he does not claim to be a partner, directly or indirectly, in Plaintiff. In fact, he claims no interest in the proceeds of Coverage A and Coverage B of the Homeowner's Policy at issue herein. It is also uncontested that AAA is a California corporation and citizen and that HF&M is also a California citizen.

Plaintiff is a Nevada limited partnership. A limited partnership is treated as a citizen of *each* state of which its members are citizens,[38] and although there is no Ninth Circuit law directly on point, arguably to the extent that its membership may similarly be other business entities, their respective citizenship may be considered by the citizenship of their respective members.[39] Having set forth the identity of each of the partners of Plaintiff, and each of their constituent members, in the Statement of Facts, *supra*, of the partnership and limited liability members, none of which are California citizens, their four (4) constituent members who are the "real parties in interest" are as follows:

(1) MM Childrens Trust. Mr. Shannahan is the trustor of the MM Childrens Trust, but it formed on or about September 27, 2007, well before the fire and loss of the Brookmead Property, and its Trustee is Tyler L. Farmer, an attorney admitted to practice in both California and Washington, who is a resident of Seattle, Washington;

(2) Shannahan Childrens Trust. The Shannahan Childrens Trust was formed in 1989. While both Mr. Shannahan and Mrs. Shannahan may have been Trustors, neither is the Trustee. In July, 2006, the then Trustee resigned and appointed as his successor Richard Tan, a U.S. citizen, who is a permanent resident of the People's Republic of China, and who resides in Shanghai, Peoples Republic of China;

(3) WPS Investments, Inc., a Nevada corporation. Mr. Shannahan has a beneficial interest in WPS Investments, Inc. However, its only business is holding passive ownership interests in the other

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[38] *See, Carden v. Arkoma Associates* (1990) 494 US 185, 195.

[39] *See, Hart v. Terminex International,* 336 F.3d 541, 542 (7th Cir. 2003).

entities related to the Brookmead Property, and it conducts no business in California. Moreover, Mr. Shannahan has been called upon to perform no corporate functions on behalf of WPS Investments, Inc. in California; and

(4) Northwest Financial Inc.,a Nevada corporation. Mr. Shannahan is the officer and director of Northwest Financial, Inc. However, the shareholder is a Cayman Island Trust whose Trustee is located in Hong Kong. Its sole asset is acting as the general partner for Northwest Financial Limited, in Northwest Financial Limited's holding of a passive ownership interest in the other entities related to the Brookmead Property, and it conducts no business in California. Mr. Shannahan has been called upon to perform no corporate functions on behalf of Northwest Financial, Inc. in California.

For determining citizenship of a trust, the trustee is the real party in interest with respect to actions on behalf of the trust; and "a trust has the citizenship of its trustee or trustees."[40] Hence, the MM Childrens Trust is a citizen of Washington, as is its trustee, and where its affairs are administered, and the Shannahan Childrens Trust has alien citizenship because its trustee administers it from Shanghai, Peoples Republic of China.

While a corporation may be deemed to have citizenship in its jurisdiction of incorporation and in the jurisdiction of its principal place of business,[41] with respect to both of the Nevada corporations, neither has a principal place of business or is doing business at all in California. Neither corporation has executive or administrative functions to be performed nor maintains any place of business in California,[42] nor has any production or service activities in California,[43] nor has any corporate operations whatsoever in California.[44]

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40 *Johnson v. Columbia Properties Anchorage, LP* (9th Cir. 2006) 437 F3d 894, 899.

41 *Co-efficient Energy Systems v. CLS Industries, Inc.*, 812 F.2d 556, 557 (9th Cir. 1987)

42 *See, Scot Typewriter Co. v. Underwood Corp.*, 170 F.Supp. 862 (S.D.N.Y.1959).

43 *See, Kelly v. United States Steel Corporation*, 284 F.2d 850 (3d Cir.1960).

44 *See, Inland Rubber Corp. v. Triple A Tire Service, Inc.*, 220 F.Supp. 490, 496 (S.D.N.Y.1963).

California Corporation Code Section 191[45] defines "conducting intra state business" as "entering into repeated and successive transactions of its business in this state". Neither Nevada corporation has any activities in California, nor is required to register as a foreign corporation doing business in California. Their having acquired and owning passive real estate interests amount to isolated transactions specifically excluded under California Corporation Code Section 191(c)(8)[46]. Accordingly, neither Nevada corporation is anything other than a citizen of Nevada, the state of its incorporation and where its only offices are located.

Since none of the business entities comprising Plaintiff, or their constituent partners business entities are California Citizens, complete diversity of citizenship exists.

D. THE MATTER BEFORE THIS COURT IS NOT WITHIN THE DOMESTIC RELATIONS EXCEPTION AND THE OTHER DOCTRINES OF ABSTENSION ARE INAPPLICABLE

Mrs. Shannahan's argument that this court should abstain from hearing this matter[47] and that the domestic relations exception divests it of jurisdiction in this matter[48] are pure sophistry because the doctrines are simply inapplicable. In making these arguments, she seeks to mislead the court into thinking that this is a domestic relations matter, whereas it is not, and to obscure the fact that Plaintiff was not, and is not a party to the Dissolution Case, or subject to any order made therein. It is Mrs. Shannahan, not Plaintiff, who seeks to insert the acrimony of a domestic relations matter into these proceedings, whereas this action does not concern, except as necessary defendants, either the parties or the classical and ecclesiastical actions in a domestic relations proceeding.

Citing *Ankenbrandt v. Richards*, Mrs. Shannahan argues that the court is divested of the authority to render a decision regarding the ownership of the fund to be impleaded by HF&M.[49] Significantly, the doctrine is inapplicable on two grounds. Firstly, *Ankenbrandt* is factually distinguishable from the present case. It was an action brought by a woman against her former husband seeking monetary damages for alleged physical and sexual abuse of her children.[50] Therein the Supreme Court held the domestic relations exception was limited to "domestic relations actions if they concern divorce, alimony or child custody."[51] The case at bar, on the other hand, does not concern the status of divorce, or alimony or child support, but concerns simply the question of determining the rights of the parties in the proceeds of Coverage A and Coverage B of the Homeowner's Policy to be impleaded by HF&G. Secondly, and more importantly, Plaintiff is not, and was not a party to the Dissolution Case, which fact was not only noted, but considered by the state family law court in awarding her a judgment against Mr. Shannahan.[52] and accordingly, the domestic relations exception to federal jurisdiction does not apply.

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[45] Cal. Corp. Code § 191.

[46] Cal. Corp. Code § 191(c)(8). It should be noted that California Corporations Code Section 15611(3)(I) similarly excludes foreign limited partnerships owning passive real estate interests resulting from isolated transactions from "conducting intra-state business" in California.

[47] *See*, Defendant Saracia L.P. Shannahan's Ex Parte Application, p. 16, l. 7 thru p. 17, l. 16.

[48] *See*, *Id.*, p. 17, l. 17 thru p. 18, l. 16.

Similarly, Mrs. Shannanhan's arguments for the other doctrines of abstension are sophistry and the doctrines are inapplicable. Each of the cases cited by her is inapposite and distinguishable on the facts. While *Wilton v. Seven Falls, Co.*, may stand for the general proposition for which it is cited,[53] the case involved a declaratory relief action to determine coverage under an insurance policy brought by the insurance company in federal court, whereas an action for damages had been brought by the insureds upon the policy in state court, which necessarily involved the same issue of coverage, and was brought in a posture making removal impossible.[54] In the present case, on the other hand, no such state court action is pending between Mrs. Shannahan and either the Plaintiff, or HF&M which involves the same issues raised by either Plaintiff's complaint for declaratory relief, or HF&M's crossclaim for interpleader. Moreover, the State of California has no vital interest in the determination of the dispute in this litigation.

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[49] *Ankenbrandt v. Richards* (1992) 504 US 689; *See*, Defendant Saracia L.P. Shannahan's Ex Parte Application, p. 17, l.19-20.

[50] *Id.*, at 692.

[51] *Id.*, at 703. It is submitted that this ruling affirms, *sub silentio,* the approach to the narrow nature of the domestic relations exception long taken in the Ninth Circuit. *See*, e.g., *Csibi v. Fustos*, 670 F.2d 134, 137-138 (9th Cir. 1982) ("As a jurisdictional limitation, the domestic relations exception has been narrowly confined. *Sutter v. Pitts*, 639 F.2d 842, 843 (1st Cir. 1981). Only those cases most closely resembling historically ecclesiastical actions have been considered absolutely outside federal court jurisdiction. These cases, at the core of the domestic relations exception, are cases where a federal court is asked to grant a divorce or annulment, determine support payments, or award custody of a child").

[52] *See,* Ex. H, to Defendant Saracia L. P. Shannahan's Ex Parte Application, Final Statement of Decision, p. 4, ll. 24-27, *and* p. 12, l. 24 thru p. 13, l. 9

[53] *Wilton v. Seven Falls Co.*, 515 U.S. 227 (1995); *See*, Defendant Saracia L.P. Shannahan's Ex Parte Application, p. 16, ll.112-15.

The cases providing *Wilton's* underpinning are similarly inapplicable and not persuasive. *Colorado Water Conservation Dist. v. United States,*[55] was a case brought by the United States involving water rights which have a long history of determination under state law. Again, one of the parties to the federal suit brought a concurrent state court litigation which, by its nature encompassed the issue which the United States raised in the federal case, and its resolution would be applicable to all of the defendants in the federal case.[56] In the present case, there is no such concurrent litigation pending in which Plaintiff is a party, nor otherwise required to insert itself as a party, and moreover, there is no such vital state interest involved such as that of the state in preserving the historical determination of water rights for its citizens.[57] Significantly, however, the Supreme Court therein cautioned that the doctrine of abstension should be sparingly applied.[58]

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[54] *Id.*, at 279-280.

[55] *Colorado Water Conservation Dist. v. United States*, 242 U.S. 800 (1976); *See*, Defendant Saracia L.P. Shannahan's Ex Parte Application, p. 16, l. 20 thru p.17, l. 2.

[56] *Id.*, at 804-806.

[57] Mrs. Shannahan's citation to 976 F.2d 582 (9th Cir1992) does not provide any authority whatsoever in that it cites to the case of *Martin v. Sullivan*, involving social security and equal protection issues not herein present.

[58] *Colorado Water Conservation Dist. v. United States*, 242 U.S. 800, 803 (1976):

> "Abstention from the exercise of federal jurisdiction is the exception, not the rule. "The doctrine of abstention, under which a District Court may decline to exercise or postpone the exercise of its jurisdiction, is an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly before it. Abdication of the obligation to decide cases can be justified under this doctrine only in the exceptional circumstances where the order to the parties to repair to the state court would clearly serve an important countervailing interest.

Significantly, Mrs. Shannahan has demonstrated no important countervailing interest to support the application of the doctrine.

The case of *Burford v. Sun Oil Company*,[59] involved a state's constitutional power to take appropriate action to protect the petroleum industry and to protect the public interest, and its complex statutory scheme with respect thereto.[60] No such vital state interests are herein present, Mrs. Shannahan's bare recitation of the general areas of marital dissolution proceedings, property ownership and insurance matters, only some of which are involved in this case, without more, does not provide authority for the proposition that they are either complex matters of state law, or involve complex and vital state interests. Accordingly the Buford Doctrine is inapplicable.

The case of *Louisiana Power and Light Co. v. City of Thibodoux* [61] was a case involving the interpretation of a state expropriation statute that had not been previously interpreted by the state courts.[62] There are no unsettled matters of law in determining whom, among the competing parties before this court, is entitled to the fund to be impleaded, and Mrs. Shannahan has directed the court to no authority to the contrary. Accordingly, the *Thibodouz* Doctrine is wholly inapplicable.

It should require no citation to authority for the proposition that the principal of comity[63] depends upon a prior determination by another court of issues effecting the same litigants before this court such that the principals of either collateral estoppel or res judicata would otherwise apply. Clearly, if Plaintiff was not a party to the Dissolution Case, its rights in the fund to be impleaded herein by HF&M have not been adjudicated by any prior court. Since it was not such a party in the Dissolution Case, it requires no citation to authority for the proposition that issue preclusion and res judicata are inapplicable to Plaintiff, and do not provide any grounds for this court's abstension in this matter.

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[59] *Burford v. Sun Oil Company,* 319 U.S. 315 (1943); *See*, Defendant Saracia L.P. Shannahan's Ex Parte Application, p. 17, ll. 4-8.

[60] *Id.*, at 319.

[61] *Louisiana Power and Light Co. v. City of Thibodoux*, 360 U.S. 25 (1959); *See*, Defendant Saracia L.P. Shannahan's Ex Parte Application, p.17, ll. 9-12.

[62] *Id.*, at 30.

[63] *See*, Defendant Saracia L.P. Shannahan's Ex Parte Application, p.18, ll. 18-24.

IV. CONCLUSION

Regardless of Mrs. Shannahan's attempts to insert the passions of the Dissolution Case into this matter, this is a declaratory relief action, and an interpleader action, and it is not a domestic relations matter. Plaintiff is not, and was not a party to the Dissolution Case, and is not bound by any determination made by the state family law court. Significantly, the insured loss occurred during the present policy period commencing "11-12-2007", which is long *after* the commencement of the Dissolution Case, and in fact it is uncontested that it also occurred long *after* the trial in the Dissolution Case. Plaintiff is the owner of the Brookmead Property and of the insurable interest therein, and is entitled to the payment of its loss thereof under Coverage A and Coverage B of the Homeowner's Policy. Even if the state family law court facilitated the voluntary payment thereof by AAA to the client trust account of HF&M, it could not take jurisdiction of Plaintiff's property rights therein because Plaintiff was not a party before state the family law court.

Clearly, Plaintiff brought the instant action before this court based upon diversity of citizenship in the good faith belief that it was not a California citizen, as set forth above, and that complete diversity existed. As the owner of the insurable interest in the Brookmead Property, and therefore entitled to the payment of the loss therefor under Coverage A and Coverage B of the Homeowners Policy, it more than a reasonable right to commence this declaratory relief action under 28 U.S.C. § 2201. The response of HF&M in seeking to implead the funds it received from AAA is a response to be expected under the circumstances, because as to HF&M, claims are being made by citizens of two different states against the fund which it holds, and should the interpleader not be dismissed under the circumstances. Accordingly, it is Mrs. Shannahan, and not Plaintiff, who should be subject to sanctions for bringing this baseless motion.

For the reasons stated and based upon the authorities cited hereinabove, it is appropriate for this court to make its order denying Mrs. Shannahan the *ex parte* relief requested by her motion, and deeming that good cause has been shown by Plaintiff why this action should not be dismissed, and for such other and further relief as the court deems just and proper.

Respectfully submitted,

Dated: July 8, 1008

DARVY MACK COHAN
Attorney for Plaintiff
Brookmead Partners, LP

EXHIBIT 1

Document 33

STATE OF NEVADA

ROSS MILLER
Secretary of State

SCOTT W. ANDERSON
Deputy Secretary for Commercial Recordings

OFFICE OF THE
SECRETARY OF STATE

Certified Copy

April 10, 2008

Job Number: C20080409-1272
Reference Number:
Expedite:
Through Date:

The undersigned filing officer hereby certifies that the attached copies are true and exact copies of all requested statements and related subsequent documentation filed with the Secretary of State's Office, Commercial Recordings Division listed on the attached report.

Document Number(s)	Description	Number of Pages
20080247240-09	Certificate of Limited Partnership	1 Pages/1 Copies

Respectfully,

ROSS MILLER
Secretary of State

By

Certification Clerk

Commercial Recording Division
202 N. Carson Street
Carson City, Nevada 89701-4069
Telephone (775) 684-5708
Fax (775) 684-7138

ROSS MILLER
Secretary of State
206 North Carson Street
Carson City, Nevada 89701-4299
(775) 684 5708
Website: secretaryofstate.biz

Filed in the office of	Document Number 20080247240-09
[signature] Ross Miller Secretary of State State of Nevada	Filing Date and Time 04/09/2008 10:45 AM
	Entity Number E0231052008-6

Certificate of Limited Partnership

(PURSUANT TO NRS CHAPTER 87A)

USE BLACK INK ONLY - DO NOT HIGHLIGHT

ABOVE SPACE IS FOR OFFICE USE ONLY

1. Name of Limited Partnership: *(see instructions)*
Brookmead Partners L.P.

2. Street and Mailing Address of Designated Office:
1000 E. William Street #204 — Street Address *(Required)* — Carson City (City) — Nevada — 89701 (Zip Code)
1000 E. William Street #204 — Mailing Address *(Required)* — Carson City (City) — NV (State) — 89701 (Zip Code)

3. Resident Agent Name, Street and Mailing Address: *(must be a Nevada address where process may be served)*
National Registered Agents, Inc., of NV — Name
1000 E. William Street #204 — Street Address *(Required)* — Carson City (City) — Nevada — 89701 (Zip Code)
1000 E. William Street #204 — Mailing Address *(Required)* — Carson City (City) — NV (State) — 89701 (Zip Code)

4. Dissolution Date: *(optional)*
A Limited Partnership governed by NRS Chapter 87A may have perpetual existence or state a dissolution date.
The date of dissolution of this entity, if any, is: 08/27/2047 (mm/dd/yyyy)

5. Name, Street Address, Mailing Address and Signature of Each General Partner: *(add additional page if more than 2)*
1) Virginia Way L.P., a Nevada Limited Partnership — Name of General Partner
X Kolssor LLC. [signature] Manager — Signature
1000 E. William Street #204 — Street Address *(Required)* — Carson City (City) — NV (State) — 89701 (Zip Code)
1000 E. William Street #204 — Mailing Address *(Required)* — Carson City (City) — NV (State) — 89701 (Zip Code)

2) ______ — Name of General Partner
X ______ — Signature
______ — Street Address *(Required)* — City — State — Zip Code
______ — Mailing Address *(Required)* — City — State — Zip Code

6. Other Matters: *(see instructions)*
☐ Mark box to indicate additional matters have been added to the Certificate of Limited Partnership and attach pages.

7. Formation Date: *(optional)*
The formation date of this entity will be the *later* of the filing date of this certificate or: ______ (mm/dd/yyyy)

8. Certificate of Acceptance of Appointment of Resident Agent:
I hereby accept appointment as Resident Agent for the above named limited partnership.
X [signature] assist. sect. — Authorized Signature of R.A. or On Behalf of R.A. Company
4-8-08 — Date

This form must be accompanied by appropriate fees.

for National Registered Agents Inc. of NV

EXHIBIT 2

Document 33

STATE OF NEVADA

ROSS MILLER
Secretary of State

SCOTT W. ANDERSON
Deputy Secretary
for Commercial Recordings

OFFICE OF THE
SECRETARY OF STATE

Certified Copy

June 25, 2008

Job Number: C20080625-2293
Reference Number: 00001914546-70
Expedite:
Through Date:

The undersigned filing officer hereby certifies that the attached copies are true and exact copies of all requested statements and related subsequent documentation filed with the Secretary of State's Office, Commercial Recordings Division listed on the attached report.

Document Number(s)	Description	Number of Pages
20080426449-19	Initial List	1 Pages/1 Copies

Respectfully,

ROSS MILLER
Secretary of State

By

Certification Clerk

Commercial Recording Division
202 N. Carson Street
Carson City, Nevada 89701-4069
Telephone (775) 684-5708
Fax (775) 684-7138

INITIAL LIST OF GENERAL PARTNERS AND RESIDENT AGENT OF

BROOKWEAD PARTNERS, LP

(Name of Limited Partnership OR Limited-Liability Limited Partnership)

FILE NUMBER
E0231052008-6

FOR THE FILING PERIOD OF April, 2008 TO April, 2009

The corporation's duly appointed resident agent in the State of Nevada upon whom process can be served is:

NATIONAL REGISTERED AGENTS INC. OF NV
1000 EAST WILLIAM STREET, SUITE 204
CARSON CITY, NV 89701

A FORM TO CHANGE RESIDENT AGENT INFORMATION CAN BE FOUND ON OUR WEBSITE: [illegible]

Important: Read instructions before completing and returning this form.

Filed in the office of	Document Number 20080426449-19
Ross Miller Secretary of State State of Nevada	Filing Date and Time 06/25/2008 10:51 AM Entity Number E0231052008-6

USE BLACK INK ONLY - DO NOT HIGHLIGHT

ABOVE SPACE IS FOR OFFICE USE ONLY

[X] Return one file stamped copy. (If filing not accompanied by order instructions, file stamped copy will be sent to resident agent.)

1. Print or type names and addresses, either residence or business, for all general partners. A General Partner must sign the form. FORM WILL BE RETURNED IF UNSIGNED.
2. If there are additional general partners, attach a list of them to this form.
3. Return the completed form with the $120.00 filing fee. A $75.00 penalty must be added for failure to file this form by the last day of the month following registration date.
4. Make your check payable to the Secretary of State. [illegible]
5. Ordering Copies: [illegible]
6. Return the completed form to: Secretary of State, 202 North Carson Street, Carson City, NV 89701-4201, (775) 684-5708.
7. Form must be in the possession of the Secretary of State on or before the last day of the first month following the initial registration date. (Postmark date is not accepted as receipt date.) Forms received after due date will be returned for additional fees and penalties.

FILING FEE: $120.00 LATE PENALTY: $75.00

NAME	TITLE(S)		
VIRGINIA WAY L.P.	GENERAL PARTNER		
ADDRESS	CITY	ST	ZIP
208 Blaine St.	Seattle	WA	98109
NAME	TITLE(S)		
	GENERAL PARTNER		
ADDRESS	CITY	ST	ZIP
NAME	TITLE(S)		
	GENERAL PARTNER		
ADDRESS	CITY	ST	ZIP
NAME	TITLE(S)		
	GENERAL PARTNER		
ADDRESS	CITY	ST	ZIP
NAME	TITLE(S)		
	GENERAL PARTNER		
ADDRESS	CITY	ST	ZIP

I declare, to the best of my knowledge under penalty of perjury, that the above mentioned entity has complied with the provisions of NRS 88.[illegible] and acknowledge that pursuant to NRS 239.330, it is a category C felony to knowingly offer any false or forged instrument for filing in the Office of the Secretary of State.

Kolmar LLC, by: Tyler Farmer

X [signature]
Signature of General Partner

Title: Manager   Date: 6/23/2008

EXHIBIT 3

Document 33

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

In re the Marriage of:

Petitioner: SARACIA SHANNAHAN

and CASE NO: D 483710

Respondent: WILLIAM PAUL SHANNAHAN

______________________________/

JAMS HEARING

Taken at San Diego, California

May 6, 2008

Reported by Dana E. Simon - CSR
Certificate No. 12683

I N D E X

JAMS HEARING
MAY 6, 2008

INDEX OF EXHIBITS

(None offered)

Certificate/Stipulation page 58

On Tuesday, May 6, 2008, commencing at the hour of 10:40 a.m., at 401 B Street, Suite 2100, in the City of San Diego, County of San Diego, State of California, before me, Dana E. Simon, Certified Shorthand Reporter in and for the State of California, the following hearing was then conducted:

A P P E A R A N C E S

HONORARY THOMAS ASHWORTH III (Ret.) JAMS

FOR THE PETITIONER:

LAW OFFICES OF BEATRICE L. SNIDER
BY: WIN HEISKALA, ESQ.
9663 Tierra Grande, Suite 301
San Diego, California 92126
(619) 566-6650

FOR THE RESPONDENT:

SANDLER, LASRY, LAUBE, BYER & VALDEZ:
BY: EDWARD I. SILVERMAN, ESQ.
(Specially appearing for John Morris and Darvy Mack Cohan)
402 West Broadway, Suite 1700
San Diego, California 92101
(619) 235-5655

FOR INTERINSURANCE EXCHANGE OF THE AAA:

SMITH, SMITH & FEELEY, LP
BY: STEPHEN E. SMITH, ESQ.
2601 Main Street, Suite 580
Irvine, California 92614
(949) 263-5920

SAN DIEGO, CALIFORNIA; MAY 6, 2008; 10:40 A.M.

THE COURT: We're going to go on the record now. This is the marriage of the Petitioner Saracia Shannahan and the Respondent William Paul Shannahan, and the case number is D 483710. And I'm going to ask for appearances, since we also have appearances from AAA Insurance Company, as I understand it.

And let me start with the Petitioner side of the case.

MR. HEISKALA: Your Honor, Win Heiskala, on behalf of Saracia Shannahan, who is also present.

MS. O'NEILL: Alexandra O'Neill on behalf of Saracia Shannahan, who is present.

THE COURT: All right. Thank you. Now we'll start with Mr. Shannahan's side of the case.

MR. SILVERMAN: Edward Silverman, appearing specially for John Morris and Darvy Mach Cohan, who represent Mr. Shannahan and Virginia Way, LP, respectively.

THE COURT: All right. Thank you.

MR. SMITH: And Stephen Smith for Interinsurance Exchange of the Automobile Club, AAA, if you will. And this is Mr. Polson, P-o-l-s-o-n, of

Interinsurance Exchange, who is the claim adjustor on the file.

THE COURT: All right. Thank you. We did have some discussions off the record, some fairly extensive discussions. And, first, I would like to deal with my understanding of the issues involving the insurance company, and then we're going to get to the issues that are directly between the parties that deal with such things as a motion for a new trial and a motion to essentially enter a different judgment, if I can call it that, since we don't have a judgment entered at this point.

And so let me start with the insurance company. My understanding of what we discussed off the record was the insurance company wanted some direction as to what should be done with funds that they are -- have either already paid out, anticipate paying out, or have offered, but then have -- for one reason or another, payment has been stopped on them.

And we have a motion pending to join the insurance company, and we also have a case involving -- I believe that involves potentially the insurance company that has now been filed in federal court.

To start out with, I agree with Mr. Shannahan's position, and probably the insurance company, that in the motion to join the insurance company, there was not proper notice of that motion. And so any hearing on that, I would be continuing for a sufficient time for a response.

However, in my view, we have a resolution that I believe is acceptable to the insurance company that will make a joinder unnecessary, number one, and, number two, I would be disinclined to join the insurance company until I know what is going to happen in federal court in any event. In other words, if they're going to take over this aspect of the case, there's no reason to join the insurance company.

But more importantly from my standpoint, I don't think there's any reason to join the insurance company, anyway, as long as there is some control over the insurance funds. Now, my understanding of what we agreed to is that there are three different forms of payment that are pending now. There may be some subcategories. But one payment is for something in the range of $900,000.

MR. SMITH: If I might, $957,525.23.

THE COURT: All right. Thank you. That payment has been proffered, but we've had difficulty how it ought to be payable and where it is going. And included within that number is $44,000, or thereabouts,

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THE COURT: Fine.

MR. SILVERMAN: Tomorrow is Wednesday. I don't know if Mr. Shannahan's in town. Maybe by Monday.

THE COURT: Okay. That's fine.

MR. SILVERMAN: By Monday, Mr. Morris will get in touch with Ms. Heiskala.

THE COURT: Okay. Now, I do not intend that this requires any separate order. This is either one or the other in the first choice, because it's the way I made the order originally is the Higgs Fletcher account.

MR. SMITH: May I make a suggestion? How about if we -- maybe if the Court could rule something to the effect that if we don't have, you know, authorization from Mr. Morris by next Friday, which would be -- I don't know what date that is -- the 16th, if we don't have an agreement that the check is going to be payable to Higgs, Fletcher & Mack and deposited, then we'll go through --

THE COURT: I'm just going to change that slightly, and I think that should be by Wednesday. I just don't want these founds out. So that's the 14th.

MR. SMITH: Okay.

THE COURT: Rather than waiting to the end of --

MR. SMITH: Okay.

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company. And I must say that they've been the most cooperative party that we've had in this litigation and are remarkably flexible.

And I will -- if I didn't already have USAA, I would end up with AAA. So that's where we are on that.

Now, as far as I am concerned, the insurance company may, but is not required to, remain around for the remainder of these proceedings. The only question that I have -- would you prefer, Ms. Heiskala, that we reset this if it becomes relevant, or would you prefer that we fix sort of an arbitrary date so we have it here? There's some things that need to happen before I can act on it. I'm not going to interfere -- obviously, even if I had the power, I wouldn't try to interfere with the federal proceeding.

But more importantly, there is still a supremacy clause. And I think I have to acknowledge that. And if they decided to take over this aspect of the case, I've lost, I think, jurisdiction to do anything there. And so I want to give them that opportunity.

But more importantly, there's no reason to involve the insurance company, because everything that we wanted accomplished is already accomplished with their consent, which is certainly appreciated.

And so what I would like to know at this point, though, before we go any further is: Is there anything that I have said that is objectionable from the insurance company's standpoint at this time? Or to put it a different way, are you willing to voluntarily comply since I don't have you joined with these terms that are orders really between these two parties at this point, is my question.

MR. SMITH: I'm a company man, so I'm going to do what you say. There's no objection, honestly. The insurance company all the way along just wants to get rid of the money. And, you know, my preference on the loss of use would have just been to pay out the entire chunk. But I understand we're going to do it on a month-by-month basis. And we're perfectly willing to comply with all the orders that you're making, or have made, I guess I should say.

MR. POLSON: With regards to that, should we make the payment by a certain date at each month? So for instance, the 25th of each month, if we don't hear one way or the other, go ahead and issue payment? Is there any -- is that all right?

MR. HEISKALA: That's fine with me.

MR. SILVERMAN: If I can ask the company how they've been making the payments to Ms. Shannahan so

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EXHIBIT 4

Document 33 F

ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS) TELEPHONE FOR COURT USE ONLY
DARVY MACK COHAN (858) 459-4432
DARVY MACK COHAN - SBN # #056753
1200 PROSPECT STREET, SUITE 550
LA JOLLA, CA 92037

REFERENCE NUMBER 00P67266-01

ATTORNEY FOR (NAME)

Insert name of court, judicial district or branch court, if any, and post office and street address
UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT
880 FRONT STREET
SAN DIEGO, CA 92101

SHORT NAME OF CASE
BROOKMEAD vs. INTERINSURANCE EX.

NON SERVICE REPORT	DATE:	TIME:	DEPT/DIV:	CASE NUMBER: 08CV659

I am and was on the dates herein mentioned over the age of eighteen years and not a party to this action;

I received the following documents:

SUMMONS AND COMPLAINT;

After due search, careful inquiry and diligent attempts at the following address(es), I have been unable to effect service of said process on:

Name: SARACIA L.P. SHANNAHAN

Home: 1245 VIRGINIA WAY
LA JOLLA, CA 92037

Process is being returned without service for the following reason(s):

04/11/08	06:58 pm	NO ANSWER AT DOOR (RESIDENCE). NO MOVEMENT. LEFT NOTE.
04/12/08	04:00 pm	NO ANSWER AT DOOR (RESIDENCE). NOTE STILL THERE.
04/12/08	08:52 pm	NO ANSWER AT DOOR (RESIDENCE). LIGHTS ON UPSTAIRS, NOTE STILL THERE.
04/13/08	06:00 am	NO ANSWER AT DOOR (RESIDENCE). NOTE STILL THERE.
04/14/08	07:00 am	NO ANSWER AT DOOR (RESIDENCE). NOTE GONE.
04/15/08	05:55 pm	NO ANSWER AT DOOR (RESIDENCE). CHECKED WITH NEIGHBOR. NEIGHBOR DID NOT WANT TO GIVE ME ANY INFORMATION.
04/16/08	06:30 pm	NO ANSWER AT DOOR. LIGHTS ON INSIDE OF THE RESIDENCE. NO MAIL TO CHECK TO VERIFY ADDRESS. NO ANSWER AT NEIGHBORS.
04/17/08	03:40 pm	NO ANSWER AT DOOR (RESIDENCE). ONLY JUNK MAIL.
04/18/08	08:05 am	NO ANSWER AT DOOR (RESIDENCE).
04/18/08	10:10 pm	NO ANSWER AT DOOR. LIGHTS OFF INSIDE OF THE RESIDENCE.
04/20/08	05:40 pm	NO ANSWER AT DOOR (RESIDENCE). NO MOVEMENT, NO MAIL TO CHECK. NEIGHBOR ACROSS THE STREET DOES NOT KNOW SUBJECT. SAYS THEY HARDLY SEE ANYONE AT THIS ADDRESS.

Fee for service: $ 97.65

JUDICIAL COUNCIL FORM, RULE #982 (A)(23)

[X] Registered: SAN DIEGO County,
Number: 620

ADVANCED ATTORNEY SERVICES, INC.
3500 5th Avenue, #202, San Diego, CA 92103
(619)299-2012

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed
on: May 27, 2008
at: SAN DIEGO, California.

Signature:
Name: P.A. RODRIGUEZ
Title: INDEPENDENT CONTRACTOR

301/00P67266-01

Continued...

04/21/08	06:50 pm	NO ANSWER AT DOOR. LIGHTS OFF INSIDE OF THE RESIDENCE.
04/22/08	07:45 am	NO ANSWER AT DOOR (RESIDENCE).
04/24/08	04:50 pm	NO ANSWER AT DOOR (RESIDENCE). CAN SEE THROUGH DOWNSTAIRS WINDOW.
04/25/08	07:45 am	NO ANSWER AT DOOR (RESIDENCE). SEEN A MEDIUM SIZED PURSE ON THE COUCH.
04/27/08	03:50 pm	NO ANSWER AT DOOR (RESIDENCE).
04/28/08	09:50 pm	NO ANSWER AT DOOR. LIGHTS OFF INSIDE OF THE RESIDENCE.
04/30/08	06:15 am	NO ANSWER AT DOOR (RESIDENCE).
05/02/08	11:07 am	NO ANSWER AT DOOR (RESIDENCE).
05/03/08	09:16 pm	NO ANSWER AT DOOR. LIGHTS ON INSIDE OF THE RESIDENCE. UNABLE TO SEE ANYONE.
05/06/08	04:10 pm	NO ANSWER AT DOOR (RESIDENCE).
05/08/08	06:50 pm	NO ANSWER AT DOOR (RESIDENCE).
05/09/08	05:27 pm	NO ANSWER AT DOOR (RESIDENCE).
05/11/08	10:05 am	NO ANSWER AT DOOR (RESIDENCE).
05/13/08		CONTINUED SERVICE ATTEMPTS AT THIS ADDRESS MAY BE FUTILE. PLEASE PROVIDE OUR OFFICE WITH ANY ADDITIONAL INFORMATION THAT MAY ASSIST IN SERVING THIS DEFENDANT OR PLEASE CALL TO DISCUSS OTHER OPTIONS, SUCH AS STAKEOUT. ORDER PLACED ON HOLD, REPORT SENT TO CLIENT.
05/19/08		REMINDER: THIS SERVICE HAS BEEN ON HOLD PENDING FURTHER INSTRUCTIONS. SERVICE WILL BE RETURNED BY 05/23/08 IF NO CALLS ARE RECEIVED.
05/23/08		RETURN TO CLIENT/NO FURTHER INSTRUCTIONS REC'D FOR SERVICE.

EXHIBIT 5

Document 33 ... F

Darvy Mack Cohan

From: Win Heiskala [Win.Heiskala@blsapc.com]
Sent: Friday, May 23, 2008 12:12 PM
To: Darvy Mack Cohan
Cc: Eileen Atkinson; Alex O'Neill
Subject: RE: Shannahan

Mack,
No, I am not representing her on that litigation. I think you will need to take that up with Jill Sullivan. Win

---

From: Darvy Mack Cohan [mailto:dmc@cohanlaw.com]
Sent: Friday, May 23, 2008 12:01 PM
To: Win Heiskala
Subject: RE: Shannahan

Win:

I'm glad you brought that up. It was one of the things on my to-do list. AAA's attorney accepted service of the Summons/Complaint by Notice/Acknowledgment of Receipt. Would you be willing to do the same on behalf of your client?
Thanks,
Mack

From: Win Heiskala [mailto:Win.Heiskala@blsapc.com]
Sent: Friday, May 23, 2008 11:31 AM
To: dmc@cohanlaw.com
Subject: Shannahan

Mac,
Hope you had a good time in Italy. Has your client served William Shannahan yet in the federal suit re Brookmead? Win

EXHIBIT 6

Darvy Mack Cohan

From: Darvy Mack Cohan [dmc@cohanlaw.com]

Sent: Friday, May 23, 2008 12:51 PM

To: 'jill@chapinwheeler.com'

Subject: Brookmead Partners v. AAA, et al.

Ms. Sullivan:

I understand from Win Heiskala that you have been retained to represent Saracia Shannahan in the above-referenced action before the U.S. District Court. AAA has agreed to accept service of the Summons/Complaint by Notice/Acknowledgment of Receipt. Would you be willing to do the same on behalf of your client?

Thank you.
Darvy Mack Cohan

EXHIBIT 7

DARVY MACK COHAN
Attorney at Law
La Jolla Financial Building
1200 Prospect Street, Suite 550
La Jolla, California 92037
telephone (858) 459-4432
facsimile (858) 454-3548
Email Address: cohanlaw@worldnet.att.net

June 6, 2008

Jill Sullivan
Chapin Wheeler LLP
550 West C Street, Suite 2000
San Diego, CA 92101

Re: Brookmead Partners v. Interinsurance Exchange, et al.
U.S. District Court Case Number 08CV-659-JLS(WMc)

Dear Ms. Sullivan:

I understand from Win Heiskala that you are representing Saracia Shannahan in the above-referenced litigation before the U.S. District Court, Southern District of California. Enclosed herewith please find a copy of the Summons on First Amended Complaint and First Amended Complaint, along with a copy of the Notice and Order for Early Neutral Evaluation Conference. I have also enclosed a Notice of Lawsuit and Request for Waiver of Service of Summons and 2 copies of the Waiver of Service of Summons prepared for your review and signature. I would appreciate your cooperation in signing the Waiver and returning the original to my office in the self-addressed envelope provided. If you are not willing to sign and return the Waiver, I would appreciate your contacting my office in this regard.

Thank you for your anticipated cooperation.

Sincerely,

Darvy Mack Cohan

DMC/jlf
Enclosures

WAIVER OF SERVICE OF SUMMONS

TO: DARVY MACK COHAN, ATTORNEY FOR PLAINTIFF
(NAME OF PLAINTIFF'S ATTORNEY OR UNREPRESENTED PLAINTIFF)

I, acknowledge receipt of your request that I waive service of a summons in the action of Brookmead v. Interinsurance, which is case number 08CV-659-JLS(WMC) in the United States District Court for the Southern District of California. I have also received a copy of the First Amended complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the First Amended complaint in this lawsuit by not requiring that I (or the entity on whose behalf I an acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I an acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after June 6, 2008 (DATE REQUEST WAS SENT), or within 90 days after that date if the request was sent outside the United States.

(DATE)

(SIGNATURE)

Printed/Typed Name:

As (TITLE) of (CORPORATE DEFENDANT)

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of a summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action had been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

TO: (A) Jill M. Sullivan of Chapin Wheeler, LP

as (B) Attorney of (C) Saracia L.P. Shannahan

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the First Amended complaint is attached to this notice. It has been filed in the United States District Court for the (D) Southern District of California and has been assigned docket number (E) 08CV-659-JLS(WMC).

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the First Amended complaint. The cost of service will be avoided if I receive a signed copy of the waiver within (F) 30 days after the date designated below a the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except that you will not be obligated to answer the First Amended complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from the date is you address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth at the foot of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff this 6th day of June, 2008.

Signature of Plaintiff's Attorney or Unrepresented Plaintiff
DARVY MACK COHAN, Attorney for Plaintiff

A - Name of individual defendant (or name of officer or agent of corporate defendant)
B - Title or other relationship of individual to corporate defendant
C - Name of corporate defendant, if any
D - District
E - Docket number of action
F - Addressee must be given at least 30 days (60 days if located in foreign country) in which to return waiver